

1 Michael L. Meeks, Esq. (State Bar No. 172000)
2 mmeeks@buchalter.com
3 Carol A. Dwyer, Esq. (State Bar No. 239769)
4 cdwyer@buchalter.com
5 **BUCHALTER NEMER**
6 18400 Von Karman Avenue, Suite 800
7 Irvine, California 92612
8 Telephone: 949.760-1121
9 Fax: 949.720-0182

Attorneys for Plaintiff, ETHAN MOREAU

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 ETHAN MOREAU, an individual,
13 Plaintiff,

14 v.

15 PHILLIP A. KENNER, an individual;
16 STANDARD ADVISORS, INC., a
17 Delaware Corporation and STANDARD
18 ADVISORS, LLC, a Nevada Limited
19 Liability Company; NA' ALEHU
20 VENTURES 2006, LLC, a Delaware
21 limited liability company; WWK
22 HAWAII HOLDINGS, LLC, a
23 Delaware limited liability company; JN
24 DEVELOPMENT LLC; a limited
25 liability company; BILL NAJAM, an
individual; LITTLE ISLE IV, LLC, a
limited liability company;

Case No. CV08-08640 GHK (JTLx)

COMPLAINT FOR:

1. Breach of Fiduciary Duty
2. Fraud
3. Professional Negligence
4. Constructive
Trust/Appointment of a
Receiver
5. Section 10b-5 Securities
Fraud

DEMAND FOR JURY TRIAL

1 KENNETH A. JOWDY, an individual;
2 BAJA DEVELOPMENT
3 CORPORATION, a Delaware
4 corporation; BAJA MANAGEMENT
5 LLC, a New York limited liability
6 company; AZ EUFORA PARTNERS II
7 LLC, a Delaware limited liability
8 company; CODEFIRE ACQUISITION
9 CORPORATION, a California
10 Corporation; JOHN WARD, an
11 individual; and DOES 1 through 10,
12 inclusive,

13 Defendant.

14 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

15 **INTRODUCTION**

16 1. The instant Complaint involves egregious breaches of trust by
17 Defendants Phillip A. Kenner, Standard Advisors, Inc. and Standard Advisors, LLC
18 (collectively, "Kenner"). Kenner was plaintiff Ethan Moreau's ("Moreau")
19 business manager and investment advisor for many years. Moreau placed
20 unquestioning trust in Kenner and allowed Kenner to exercise a significant amount
21 of control over Moreau's money.

22 2. In concert with the named co-defendants, Kenner perpetrated a series
23 of investment scams against Moreau, as well as other "clients" of Kenner. Among
24 other things, Kenner secretly controlled many of the purported investment
25 opportunities through "straw men" name herein as co-defendants. Moreover,
26 Kenner entered into arrangements with regard to many of the "investments"
27 whereby Kenner received secret interests and "kick-backs." In addition, Kenner
28 secretly withdrew funds from Moreau's brokerage accounts, without Moreau's
consent, and used them for Kenner's own personal use.

3. Whereas Moreau is informed and believes that Kenner has financially

1 gained from investments which Kenner has recommended to Moreau in the last
2 several years, Moreau has not received investment returns from these investments.
3 Nor does he even had any written records of these investments of proof that they
4 have in fact been made.

5 4. Equally as disturbing, in rendering “professional” services to Moreau,
6 Kenner has committed myriad acts of negligence, failing to complete the most basic
7 accounting tasks and consistently failing to provide Moreau with adequate
8 documentation of this investments or any financial statements. As a result of
9 Kenner’s malfeasance and neglect, Moreau cannot account for millions of dollars of
10 his assets.

11 PARTIES

12 5. Plaintiff Ethan Moreau is a citizen and resident of the country of
13 Canada. Moreau is hereinafter referred to as “Moreau” or “Plaintiff.”

14 6. Plaintiff is informed and believes that defendant Phillip A. Kenner is a
15 citizen and resident of Arizona. Plaintiff is also informed and believes, and based
16 thereon alleges, that he had conducted, and continues to conduct, business in
17 California on a regular basis. Kenner has served as Plaintiff’s business manager
18 and investment advisors for many years.

19 7. Plaintiff is informed and believes that Defendant Standard Advisors,
20 Inc. is a Delaware Corporation with its principal place of business in Arizona but
21 also does business in the Central District of California. Plaintiff is informed and
22 believes that Defendant Standard Advisors, LLC is a Nevada limited liability
23 company with its principal place of business in Nevada but also doing business in
24 Los Angeles County, California. Phillip A. Kenner, Standard Advisors, Inc. and
25 Standard Advisors, LLC are hereinafter collectively referred to as “Kenner” or
26 “Defendants.”

27 8. Plaintiff is informed and believes, and based thereon alleges, that
28 defendant Bill Najam is a citizen and resident of New York. Plaintiff is further

1 informed and believes, and based thereon alleges, that defendant Bill Najam is
2 Kenner's uncle.

3 9. Plaintiff is informed and believes, and based thereon alleges, that
4 defendant Kenneth A. Jowdy is a citizen and resident of Las Vegas.

5 10. Plaintiff is informed and believes, and based thereon alleges, that
6 defendant Na' Alehu Ventures 2006, LLC ("NAV") is a Delaware limited liability
7 company with its principal place of business in Arizona and also doing business in
8 California and Hawaii. Plaintiff is informed and believes, and based thereon
9 alleges, that Kenner is the managing member of NAV.

10 11. Plaintiff is informed and believes, and based thereon alleges, that
11 defendant WWK Hawaii Holdings, LLC is a Delaware limited liability company
12 with its principal place of business Massachusetts and doing business in Hawaii.

13 12. Plaintiff is informed and believes, and based thereon alleges, that
14 defendant Windwalker Hawaii LLC is a Delaware limited liability company with its
15 principal place of business in Massachusetts and doing business in Hawaii.

16 13. Plaintiff is informed and believes, and based thereon alleges, that JN
17 Development LLC is a Delaware limited liability company with its principal place
18 of business in Arizona. Plaintiff is further informed and believes, and based
19 thereon alleges, that JN Development LLC is a member of Na' Alehu Ventures
20 2006, LLC. Plaintiff is also informed and believes, and based thereon alleges, that
21 defendants Ken Jowdy and Bill Najam are nominally members of JN Development
22 LLC.

23 14. Plaintiff is informed and believes, and based thereon alleges, that
24 defendants Kenner, Ken Jowdy, Bill Najam, WWK Hawaii Holdings LLC,
25 Windwalker Hawaii LLC, JN Development LLC, and NAV (collectively the
26 "Hawaii Defendants") are part of a scheme intended to conceal secret interests and
27 profits and enrich these defendants at the expense of actual investors in certain
28 Hawaii real estate.

1 15. Plaintiff is informed and believes, and based thereon alleges, that
2 defendant Baja Development Corporation is a Delaware corporation. Plaintiff is
3 informed and believes, and based thereon alleges, that defendant Baja Development
4 Corporation is controlled by defendants Kenner and Ken Jowdy.

5 16. Plaintiff is informed and believes, and based thereon alleges, that
6 defendant Baja Management LLC is a New York limited liability company with its
7 principal place of business in Connecticut and also does business in Arizona and
8 Mexico. Plaintiff is informed and believes, and based thereon alleges, that Baja
9 Management LLC is controlled by defendants Kenner and Ken Jowdy (Plaintiff
10 collectively refers to Kenner, Jowdy, Baja Development Corporation, and Baja
11 Management LLC as the "Mexico Defendants").

12 17. Plaintiff is informed and believes, and based thereon alleges, that
13 defendant AZ Eufora Partners II, LLC is a Delaware limited liability company with
14 its principal place of business in Arizona. Plaintiff is informed and believes, and
15 based thereon alleges, that Kenner is and at all time relevant hereto was the
16 managing member of AZ Eufora Partners II, LLC ("Eufora"). Plaintiff is informed
17 and believes, and based thereon alleges that Kenner used the funds invested in for
18 his personal benefit. Kenner has never accounted to Moreau for the funds invested
19 in Eufora.

20 18. Plaintiff is informed and believes, and based thereon alleges, that
21 defendants Code Fire Acquisition Corporation ("Code Fire") is a California
22 corporation with its principal place of business (if any) in Arizona. Plaintiff is
23 further informed and believes, and based thereon alleges, that Kenner controlled
24 Code Fire Acquisition Corporation.

25 19. Plaintiff is informed and believes, and based thereon alleges, that
26 defendant John Ward is a citizen and resident of California. Plaintiff is further
27 informed and believes that John Ward was the president of defendant Code Fire but
28 acted under the direction and control of Kenner (Plaintiff collectively refers to

1 defendants Code Fire, Kenner and Ward as the “Code Fire Defendants”).

2 20. Plaintiff is informed and believes, and based thereon alleges, that in
3 doing the acts alleged herein, each of the Defendants was the agent, principal,
4 employee, or alter ego of one or more of the other Defendants, and acted with the
5 other Defendants’ knowledge, consent and approval. As such, each of the
6 Defendants is responsible for the liabilities of the other Defendants, as alleged
7 herein.

8 **JURISDICTION AND VENUE**

9 21. Jurisdiction exists in this action pursuant to 28 U.S.C. § 1331, based
10 on violation of the Section 10b-5 Securities Fraud. In addition, the Court has
11 supplemental jurisdiction over the state law causes of action pursuant to .

12 22. This Court has personal jurisdiction over all defendants, who do
13 business in California and have sufficient minimum contacts in California in
14 connection with the events giving rise to this action. Plaintiff is informed and
15 believes, and based thereon alleges, that:

16 a. Defendants Kenner and Standard Advisors regularly do business in
17 Los Angeles County, California. The acts and omissions alleged
18 herein arose out of these business activities by Kenner and Standard
19 Advisors.

20 b. The Hawaii Defendants jointly participated in a series of
21 misrepresentations made in communications to “investors” in an entity
22 known as Little Isle IV who were located in Los Angeles County,
23 California and elsewhere in California. The Hawaii Defendants
24 directed and participated jointly and as agents of each other in these
25 communications which occurred within the Central District of
26 California and elsewhere in California. The claims for relief alleged
27 herein arise out of the misrepresentations and omissions made to
28 investors including Plaintiff, as well as the conduct of the business of

defendants Kenner and Standard Advisors.

c. The Mexico Defendants jointly participated in a series of misrepresentations made in communications to California “investors”, including such representations made to investors in Los Angeles County, regarding defendants Baja Development Corporation and Baja Management LLC. The claims asserted herein arise out of the same conduct and representations made and/or originated within California, as well as the conduct of the business of defendants Kenner and Standard Advisors.

23. Venue is proper within this District pursuant to 28 U.S.C. § 1391(a), as the transactions and occurrences giving rise to the claims alleged herein took place within this District and Defendants do business in this District. In addition, venue is proper within this District pursuant to 28 U.S.C. § 1391(a) and (b).

STATEMENT OF FACTS

24. Moreau is a professional hockey player.

25. Defendant Phillip A. Kenner has provided business management and investment advisor services to Moreau for many years. Beginning in or about 2003, Kenner provided services to Moreau through Defendants Standard Advisors, Inc. and/or Standard Advisors, LLC.

26. Over the course of a lengthy professional relationship, Moreau came to believe that he could rely on Kenner to act at all times in Moreau’s best interests. Kenner erroneously represented that he was a top-tier financial advisor who had the skills to grow Moreau’s assets, the expertise to manage those assets and was keyed into lucrative investments which he would recommend to Moreau in order substantially to grow his investment portfolio.

27. As detailed herein, Moreau is informed and believes that rather than acting in Moreau’s best interests, Kenner made affirmative misrepresentations and material omissions in his communications with Moreau and committed numerous

1 acts which constitute breach of his fiduciary duties to Moreau. During the course of
2 the professional relationship between Kenner and Moreau, Kenner set out on a
3 course to exploit and take unfair advantage of Moreau, reaping significant financial
4 and other benefits for himself without regard for Moreau and to Moreau's outright
5 detriment.

6 28. Kenner preyed upon this personal relationship with Moreau, exploiting
7 the complete trust Moreau placed in him for Kenner's own gain. Kenner exhibited
8 a willingness to take whatever actions were necessary to capitalize on Moreau's
9 trust and confidence, which he had gained over the course of several years of acting
10 as Moreau's advisor.

11 29. Kenner and Standard Advisors recommended that Moreau loan
12 \$500,000 to Baja Development Corporation without interest on the loan. Moreau
13 received a promissory note from Baja Development Corporation which provided
14 that the loan would not be repaid until "not less than 100 individuals acquired
15 membership interests in the proposed development of the Golf Club and Resort to
16 be developed in El Rosario, Baja, California by Baja Development Corporation."
17 Kenner secured this loan from Moreau by representing that the funds would only be
18 used for the development in El Rosario. Kenner never told Moreau that Kenner
19 was personally benefiting from the interest-free loan.

20 30. Plaintiff is informed and believes, and based thereon alleges, that
21 Kenner and Standard Advisors were directing and controlling the development in El
22 Rosario for the benefit of Kenner and Standard Advisors, which was derived
23 through a series of partnerships concealing Kenner's interests. Plaintiff is informed
24 and believes that Kenner exercised control over the Mexico Defendants all of
25 whom obtained the \$500,000 loaned by Moreau.

26 31. Plaintiff is informed and believes, and based thereon alleges, that the
27 Mexico Defendants abandoned the El Rosario development described in the Baja
28 Development Corporation promissory note. Plaintiff is informed and believes, and

1 based thereon alleges, that Kenner and Standard Advisors did not disclose to
2 Moreau that Baja Development Corporation abandoned the El Rosario
3 Development for which the loan was made.

4 32. Plaintiff is informed and believes, and based thereon alleges that
5 Kenner and Standard Advisors induced him to make a further investment of
6 \$200,000 in a separate real estate development in Cabo, Mexico known as
7 Diamante Cabo based upon the representation that the profits of Diamante Cabo
8 were necessary to complete the El Rosario development. This representation was
9 false and Moreau is informed and believes, and based thereon alleges, that the
10 Mexico Defendants used Moreau's additional \$200,000 for their own personal
11 benefit.

12 33. Plaintiff has not been paid the \$500,000 owed by Baja Development
13 Corporation. Plaintiff has virtually no information about how the total \$700,000
14 invested in the Mexico development's at Kenner's recommendation used the money
15 except that Kenner hosted lavish parties and flew potential investors to Mexico in
16 private planes. Plaintiff is informed and believes, and based thereon alleges, that
17 the Mexico Defendants, and each of them, is responsible for repayment of the entire
18 balance of the promissory note.

19 34. Kenner and Standard Advisors were obligated to account to Moreau
20 for all of the investments yet no such accounting has ever been provided.

21 35. In addition to the foregoing, Moreau is informed and believes, and
22 based thereon alleges, that Kenner recommended that Moreau invest \$100,000 in a
23 company known as Teknik Digital Arts, Inc. Moreau is informed and believes that
24 Teknik Digital Arts, Inc. was not an appropriate investment for him. Moreau is
25 further informed and believes, and based thereon alleges, that Kenner
26 recommended that investment because Kenner anticipated receiving a personal
27 benefit from the investment. Moreau is informed and believes, and based thereon
28 alleges, that the "investment" in Teknik Digital Arts, Inc. is now worthless.

1 36. Kenner also convinced Moreau to invest \$100,000 in an entity known
2 as Big Isle IV, which Kenner later renamed Little Isle IV, LLC. Kenner
3 represented to Moreau that the investment was a real estate project in Hawaii.
4 Unknown to Moreau, Kenner controlled the project. Moreau is informed and
5 believes, and based thereon alleges, that Kenner managed the investment and
6 structured a transaction in which Kenner and the Hawaii Defendants obtained the
7 majority interest in the overall project through shell entities. Moreau is informed
8 and believes that Kenner took money from the Hawaii project for his own personal
9 benefit.

10 37. Kenner also convinced Moreau to invest \$200,000 in Eufora a
11 purported secured credit card company. Plaintiff is informed and believes, and
12 based thereon alleges, that Eufora was operated by Kenner. Total investment into
13 Eufora from all investors exceeded \$600,000 all of which came from Kenner's
14 investment advisory clients. Plaintiff is informed and believes, and based thereon
15 alleges, that Kenner used the funds invested in Eufora for his own benefit. Plaintiff
16 is further informed and believes, and based thereon alleges, that Kenner has never
17 accounted for any of the funds invested in Eufora.

18 **First Claim For Relief**

19 **Breach Of Fiduciary Duty**

20 **(Against Kenner and Standard Advisors)**

21 38. Plaintiff incorporates and realleges herein paragraphs 1 through 37
22 above, as if set forth in full.

23 39. Kenner and Standard Advisors. owed Plaintiff a fiduciary duty as
24 Plaintiff's financial and investment advisors. Plaintiff placed absolute trust in the
25 recommendations of Kenner and Standard Advisors. as detailed above.

26 40. In addition, Moreau is informed and believes that Kenner took steps to
27 exercise complete control over the remainder of Moreau's financial portfolio,
28 investing substantial amounts of his assets in companies and projects which Kenner

1 recommended and about which h Kenner provided very little information to
2 Moreau. In each instance in which Kenner prevailed upon Moreau to participate in
3 an investment, Kenner failed to provide any information about the structure,
4 timeline or expected return from the investment. In addition, Moreau has never –
5 over the course of several years – received any appreciable returns on investments
6 recommended to him by Kenner. This despite numerous misrepresentations from
7 Kenner that such returns would be forthcoming. In clear breach of his professional
8 obligations, Kenner has never provided Moreau with adequate records of any of his
9 initial investments or of any purported returns on those investments.

10 41. As detailed more fully above, Moreau is informed and believes that, on
11 numerous occasions, in breach of his fiduciary duties to Moreau, Kenner invested
12 hundreds of thousands of dollars of Moreau's assets in companies and ventures in
13 which Kenner had an ownership interest. Kenner never disclosed to Moreau his
14 ownership interest in these investments.

15 42. Moreau is further informed and believes that Kenner represented to
16 various companies that Kenner could secure significant amounts of investment
17 capital from Moreau (and other of Kenner's clients) in exchange for either a
18 percentage ownership of the companies or a portion of the companies' profits solely
19 for himself and as a result secured such benefits for himself. Kenner never
20 disclosed to Moreau that Kenner would reap a direct personal financial gain from
21 any investment which he recommended to Moreau.

22 43. Moreau is informed and believes that, as of in or about April 2003,
23 Defendant Phillip Kenner was no longer a licensed investment advisor. Kenner
24 never informed Moreau that he was not longer licensed. Moreover, Moreau is
25 informed and believes that Kenner performed services on Moreau's behalf that
26 should only be performed by licensed investment advisors, including buying and
27 selling regulated securities and changing Moreau's asset allocations.

28 44. Moreau is informed and believes that Kenner also made undisclosed

1 kick backs from disability policies issued to Moreau through an insurance
2 brokerage firm.

3 45. Plaintiff only became aware of Kenner's extensive breach of fiduciary
4 duty, fraud and negligence in recent months.

5 46. Plaintiff is entitled to recover damages against Kenner and Standard
6 Advisors for all of the investment losses and thefts set forth above. In addition,
7 Plaintiff seeks disgorgement of all profits traceable to Kenner and Standard
8 Advisors' use of Moreau's funds for their own personal gain.

9 **SECOND CLAIM FOR RELIEF**

10 **FOR FRAUD**

11 **(Against All Defendants)**

12 47. Plaintiff hereby incorporates by this reference as though set forth in
13 full at this point, each of the allegations contained in paragraphs 1 through 71
14 above.

15 48. Defendant Kenner has owed Plaintiff fiduciary duties resulting from
16 the position of trust and confidence he assumed as Plaintiff's business manager and
17 investment advisor. Beginning in or about 2003, Kenner provided services to
18 Plaintiff through Defendants Standard Advisors, inc. and/or Standard Advisors,
19 LLC. Plaintiff reposed total, unfettered trust and confidence in Kenner.

20 49. As more fully set forth above, Kenner intentionally made the following
21 material misrepresentations and omissions of material fact to Moreau:

22 a. Moreau is informed and believes that Kenner repeatedly
23 recommended that Moreau invest in companies and projects in which Kenner had
24 an ownership interest without ever disclosing his interest to Moreau while Kenner
25 as a fiduciary of Moreau owed a duty to disclose such interests;

26 b. Moreau is informed and believes that Kenner represented to
27 various companies that Kenner could secure significant amounts of investment
28 capital from Moreau (and other of Kenner's clients) in exchange for either a

1 percentage ownership of the companies or a portion of the companies' profits solely
2 for himself and, based thereon, secured such ownership and profits;

3 c. Moreau is informed and believes that Kenner held himself out as
4 a licensed investment advisor (and performed services that should only be
5 performed by licensed investment advisors) when he was no longer licensed to
6 provide such services.

7 50. Because Moreau was unaware of the material facts being concealed by
8 Kenner, Plaintiff allowed Kenner to continue in his role as business manager and
9 investment advisor, continued to place trust and confidence in Kenner, and agreed
10 to make a multimillion-dollar loan to him. Had Plaintiff known the true facts, he
11 would have germinated Kenner immediately.

12 51. Plaintiff only discovered the true facts recently.

13 52. As a direct and proximate result of Kenner's fraudulent concealment
14 of material facts and affirmative misrepresentations, Plaintiff has suffered
15 substantial damages in an amount to be determined at trial.

16 53. Plaintiff is informed and believes, and based thereon alleges, that all of
17 the above-identified defendants knew that Kenner was engaged in a fraudulent
18 enterprise with the intent of misappropriating funds from his clients, including
19 Moreau. Plaintiff further alleges that each of the above-identified defendants
20 conspired with and assisted Kenner in accomplishing his fraudulent activities by
21 assisting Kenner and acting at Kenner's directions in operating the fraudulent
22 entities described above.

23 54. Plaintiff is informed and believes and based thereon alleges that
24 Kenner has concealed material facts and made affirmative misrepresentations
25 willfully, wantonly and in reckless disregard of Plaintiff's rights. Kenner's conduct
26 has been so egregious as to justify an award of punitive damages to deter such
27 conduct in the future.

28

THIRD CLAIM FOR RELIEF
FOR PROFESSIONAL NEGLIGENCE

(Against Defendants Kenner, Standard Advisors and Assante)

55. Plaintiff hereby incorporates by this reference as though set forth in full at this point, each of the allegations contained in paragraphs 1 through 55 above.

56. Defendant Kenner has acted as business manager and investment advisor for Plaintiff. Beginning in or about 2003, Kenner provided those services to Moreau through Defendants Standard Advisors, Inc. and/or Standard Advisors, LLC. . As such, Kenner owed a duty to Plaintiff to use such skill, prudence and diligence as other reputable members of the accounting and financial services profession in a similar locality commonly possess and exercise under similar circumstances.

57. Moreau did not, and could not through the exercise of reasonable diligence, have learned that the advice he had received from Kenner and Standard Advisors fell below the standard of care, or that he had suffered substantial damages as a result.

58. Plaintiff is informed and believes, and thereon alleges, that defendants were negligent and failed to fulfill their professional obligations to Plaintiff by engaging in the conduct alleged herein, including:

a. Kenner and Standard Advisors provided Moreau with any statements relating to Moreau's investments account;

b. Kenner and Standard Advisors also failed to provide any quarterly cash-basis financial statements;

c. Kenner and Standard Advisors failed to provide Moreau with records of Moreau's investments or any purported returns;

d. Kenner, Standard Advisors and Assante failed to adequately investigate investments that they recommended and failed to disclose all risks

1 associated with those investments to Moreau;

2 e. Kenner and Assante failed to inform Moreau that Kenner had
3 recommended investments to Moreau that were not approved or researched by
4 Assante during the time Kenner was employed by Assante in violation of Assante's
5 policies and procedures as well as violating the standard of care;

6 59. As a direct and proximate result of Kenner's, Assante's, and Standard
7 Advisor's negligence in failing to fulfill his professional obligations to Plaintiff,
8 Plaintiff has suffered damages in excess of \$75,000, in an amount to be determined
9 at trial.

10 **FOURTH CLAIM FOR RELIEF**
11 **FOR CONSTRUCTIVE TRUST AND APPOINTMENT OF A RECEIVER**

12 **(Against All Defendants)**

13 60. Plaintiff hereby incorporates by this reference as though set forth in
14 full at this point, each of the allegations contained in Paragraphs I through 84
15 above.

16 61. As a result of the conduct described above concerning all defendants
17 except Assante, and the resulting conversion of Plaintiff's assets, a constructive
18 trust is required to be imposed on all monies or assets which Defendants have in
19 their possession, custody or control to ensure that monies rightfully belonging to
20 Plaintiff are not dissipated.

21 62. In addition, in light of the theft of funds and commingling of assets,
22 the Court should order that all of defendants' property and holdings be identified to
23 an independent receiver who can take over and manage the assets pending
24 disposition of this litigation.

FIFTH CLAIM FOR RELIEF
VIOLATION OF SECTION 10(b)

OF THE SECURITIES EXCHANGE ACT OF 1934

(Against Defendants Kenner and Standard Advisors)

63. Plaintiff hereby incorporates by this reference as though set forth in full at this point, each of the allegations contained in Paragraphs 1 through 87 above.

64. Plaintiff is informed and believes, and based thereon alleges, that each of the foregoing investments including Eufora, Code Fire, Mexico property, and Little Isle IV recommended by Kenner and Standard Advisors constituted securities within the meaning of 15 U.S.C. § 78(j)(b), and Rule 10b-5.

65. Kenner and Standard Advisors acted with scienter. The intent to deceive is established by the foregoing allegations including: (1) the use of corporate entities such as Ecser which has no business operations and served only to move Moreau's money overseas; (2) concealing Kenner's ownership interest in many of the recommended investments for the purpose of personally profiting at the expense of others; and (3) Kenner's misappropriation of Moreau's funds from Moreau's Northern Trust account by use of fraudulent loan documents.

66. Kenner and Standard Advisors made false representations about Eufora including the assertion that Eufora was an operating business when in fact it appears that Kenner merely used Eufora's funds for his own benefit. Kenner and Standard Advisors also concealed their ownership and control as well as secret profits relating to the investments and instead represented that investments in securities such as Code Fire, the Mexico property, and other identified above would yield high returns, when there was no basis for such statements. Kenner and Standard Advisors were motivated by their secret attempt to obtain control over Impact as described above.

67. Moreau relied upon Kenner and Standard Advisors in purchasing the

1 securities and believed that Kenner and Standard Advisors was making
2 recommendations with Moreau's best interest in mind.

3 68. As a result of Kenner's and Standard Advisor's misrepresentations and
4 concealment, Moreau lost the money invested as described above.

5 69. Kenner and Standard Advisors violated 15 U.S.C. § 80b-6 by
6 breaching their fiduciary duties, by committing the fraud described above and by
7 unlawfully converting monies belonging to Plaintiff, Defendants have been unjustly
8 enriched in vast sums.

9 70. As a direct and proximate result of Defendants' gross misconduct,
10 Moreau has been damaged in an amount in excess of \$75,000 to be proven at trial.

11
12 WHEREFORE, Plaintiff prays for judgment as follows:

- 13 1. For damages according to proof to be determined at trial, together with
14 interest thereon at the maximum rate permitted by law;
15 2. Injunctive relief, including preliminary and permanent injunctive relief
16 barring Defendants from exercising control over Plaintiff's monies and property;
17 3. The appointment of a temporary and permanent receiver to manage
18 Defendants assets, which are commingled with Plaintiff's monies;
19 4. Disgorgement of profits;
20 5. For exemplary and punitive damages according to proof;
21 6. For costs of suit, including attorneys' fees; and
22 7. For such other relief as the Court may deem just and proper.

23 Dated: December 30, 2008

BUCHALTER NEMER

24
25 By: 

26 Michael L. Meeks
27 Attorneys for Plaintiff
28 ETHAN MOREAU

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on all issues so triable.

Dated: December 30, 2008

BUCHALTER NEMER

By: 

Michael L. Meeks
Attorneys for Plaintiff
ETHAN MOREAU

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George King and the assigned discovery Magistrate Judge is Jennifer T. Lum.

The case number on all documents filed with the Court should read as follows:

2:CV08- 8640 GHK (JTLx)

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Michael L. Meeks (State Bar No. 172000)
mmeeks@buchalter.com
Carol A. Dwyer (State Bar No. 239769)
cdwyer@buchalter.com
Buchalter Nemer
18400 Von Karman Avenue, Suite 800
Irvine, CA 92612
(949) 760-1121

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ETHAN MOREAU, an individual

PLAINTIFF(S)

v.

PHILLIP A. KENNER, an individual

DEFENDANT(S).

See attachment

CASE NUMBER

CV08-08640 GHK (JTLx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael L. Meeks, whose address is 18400 Von Karman Avenue, Suite 800, Irvine, CA 92612. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Dated: DEC 31 2008

Clerk, U.S. District Court

By: 

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

1 Michael L. Meeks, Esq. (State Bar No. 172000)

2 mmeeks@buchalter.com

3 Carol A. Dwyer, Esq. (State Bar No. 239769)

4 cdwyer@buchalter.com

5 **BUCHALTER NEMER**

6 18400 Von Karman Avenue, Suite 800

7 Irvine, California 92612

8 Telephone: 949.760-1121

9 Fax: 949.720-0182

10 Attorneys for Plaintiff, ETHAN MOREAU

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 ETHAN MOREAU, an individual,

14 Plaintiff,

15 v.

16 PHILLIP A. KENNER, an individual;
17 STANDARD ADVISORS, INC., a
18 Delaware Corporation and STANDARD
19 ADVISORS, LLC, a Nevada Limited
20 Liability Company; NA' ALEHU
21 VENTURES 2006, LLC, a Delaware
22 limited liability company; WWK
23 HAWAII HOLDINGS, LLC, a
24 Delaware limited liability company; JN
25 DEVELOPMENT LLC; a limited
26 liability company; BILL NAJAM, an
27 individual; LITTLE ISLE IV, LLC, a
28 limited liability company;

Case No.

COMPLAINT FOR:

1. Breach of Fiduciary Duty
2. Fraud
3. Professional Negligence
4. Constructive
Trust/Appointment of a
Receiver
5. Section 10b-5 Securities
Fraud

DEMAND FOR JURY TRIAL

1 KENNETH A. JOWDY, an individual;
2 BAJA DEVELOPMENT
3 CORPORATION, a Delaware
4 corporation; BAJA MANAGEMENT
5 LLC, a New York limited liability
6 company; AZ EUFORA PARTNERS II
7 LLC, a Delaware limited liability
8 company; CODEFIRE ACQUISITION
9 CORPORATION, a California
10 Corporation; JOHN WARD, an
individual; and DOES 1 through 10,
inclusive,
Defendant.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) ETHAN MOREAU, an individual	DEFENDANTS PHILLIP A. KENNER, an individual; STANDARD ADVISORS, INC., a Delaware Corporation and STANAARD ADVISORS, LLC, a Nevada Limited Liability Company, (SEE ATTACHMENT)
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) BUCHALTER NEMER 18400 Von Karman Avenue, Suite 800 Irvine, CA 92612 (949) 760-1121	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <th style="text-align: left;">Plaintiff</th> <th style="text-align: left;">Defendant</th> </tr> <tr> <td> Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 </td> <td> Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6 </td> </tr> </table>	Plaintiff	Defendant	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6
Plaintiff	Defendant				
Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6				
IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge					

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 15 U.S.C. 78(j)(b), Rule 106-5 - Investment Advisor selling fraudulent investments.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) 405(g) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
--	--	--	--	---	--

FOR OFFICE USE ONLY: Case Number: **CV08-08640 GHK (JTLx)**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Canada

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	California, New York, Mexico, Arizona, Delaware, Hawaii

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date December 30, 2008

MICHAEL L. MEEKS

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

CIVIL CASE COVER SHEET (ATTACHMENT)

DEFENDANTS:

NA' ALEHU VENTURES 2006, LLC, a Delaware limited liability company; WWK HAWAII HOLDINGS, LLC, a Delaware limited liability company; WINDWALKER HAWAII LLC, a Delaware limited liability company; JN DEVELOPMENT LLC; a limited liability company; BILL NAJAM, an individual; LITTLE ISLE IV, LLC; KENNETH A. JOWDY, an individual; BAJA DEVELOPMENT CORPORATION, a Delaware corporation; BAJA MANAGEMENT LLC, a New York Limited Liability company; AZ EUFORA PARTNERS II LLC, a Delaware limited liability company; CODEFIRE ACQUISITION CORPORATION, A California corporation; JOHN WARD an individual; and DOES 1 through 10, inclusive,